

Wednesday, September 22, 2004

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Kampee Mongkolsiri, 213313

7-1-99 to 6-30-02, \$8,235.43 Tax, \$823.59 Negligence Penalty

For Petitioner: Kampee Mongkolsiri, Taxpayer

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited understatement of taxable sales is excessive.

Whether petitioner was negligent.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Carpeteria Markarian Company, Inc., 197090

1-1-97 to 12-31-01, \$33,655.78 Tax

For Petitioner: David P. Segal, CPA

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence warrants further adjustments for shrinkage.

Whether the costs of materials consumed on construction contracts should be reduced for rebates and incentives.

Whether the Waiver of Limitation form signed by petitioner should be nullified or rescinded.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Demboyz, Inc., 182958

7-1-98 to 6-30-01, \$115,056.29 Tax

For Petitioner: Bruce Legawiec, Representative

Daniel Greene, CPA

Peter Bougard, Taxpayer

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Vendor Tag Leasing Program constitutes a continuing sale and purchase of tangible personal property (TPP) the gross receipts from which are subject to tax, or instead the nontaxable transfer of TPP incidental to the performance of a service.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Pictured Illusions, Inc., 154372

3-6-95 to 7-1-99, \$00.00 Tax, \$21,719.96 Knowingly Operating without a Seller's Permit
Penalty, \$4,344.06 Failure to File Penalty

For Petitioner: Patrick Leone, CPA
John Penir, Taxpayer

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the 50 percent penalty for knowingly operating a business in this state as a retailer without a seller's permit was properly imposed.

Whether relief from the 10 percent penalty for failure to file returns is warranted.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Robert Allen Davis and Richard Charles Leavenworth, 158409

2-1-97 to 1-31-98, \$41,025.82 Tax, \$10,256.48 Fraud Penalty

For Petitioner: Robert Allen Davis, Taxpayer

For Sales and Use Tax Department: Jeffrey Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Davis is responsible for the liability of the business because he was a partner.

Whether Davis can be held liable for the fraud penalty as a partner in the business.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mold Machine Company, Inc., 182123

10-1-98 to 9-30-01, \$47,739.09 Tax, \$00.00 Negligence Penalty

For Petitioner: Warren Nemiroff, Attorney
Glenn Brown, Taxpayer

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence shows that charges for various claimed nontaxable labor items were in fact nontaxable repair labor.

Whether the evidence shows that the disallowed sales for resale were in fact valid nontaxable sales for resale.

Whether the evidence shows that the Department correctly assessed use tax with regard to ex-tax purchases of supplies and materials that were self-consumed, for which petitioner issued resale certificates.

Action: Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be submitted for decision.

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Ibrahim Oudeh, 209552

10-1-98 to 6-30-00, \$17,690.56 Tax, \$1,678.07 Negligence Penalty

For Petitioner: Ronald Drake, Bookkeeper

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the waivers of limitation are valid.

Whether the audited understatement in taxable sales are excessive.

Whether the negligence penalty should be deleted.

Action: Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be submitted for decision.

Denise Alina Salazar and Rick Manuel Salazar, 185787

5-11-99 to 4-30-01, \$00.00 Tax, \$22,420.47 Fraud Penalty

For Petitioner: Denise Alina Salazar, Taxpayer

For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners knowingly failed to obtain a valid seller's permit prior to the date on which the first tax return was due for the purpose of evading the payment of taxes due.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Ms. Mandel requested a report of other licenses that taxpayers may need to do business (e.g., ABC-liquor license, DMV-dealer license, etc.) and information as to whether the taxpayer is required to obtain a Seller's Permit prior to obtaining these licenses. If no Seller's Permit is required to obtain these licenses, the Department should consider and provide a recommendation as to whether legislation should be proposed to change current practice to make this a requirement.

Crossroads Truck Dismantlers, Inc., 193778

4-1-98 to 3-31-01, \$13,030.68 Tax

For Petitioner: Ronald Drake, Bookkeeper

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the disallowed claimed nontaxable sales for resale were in fact valid sales for resale.

Whether petitioner has established that it is entitled to adjustments to the measure of tax attributable to unrecorded sales.

Whether petitioner has established that the audit adjustment for recorded but not reported taxable sales was excessive.

Whether petitioner should be relieved of tax on the sale of five vehicles during the audit period.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, September 22, 2004

Barry P. Beauchamp, 205825

1-1-00 to 12-31-01, \$15,445.00 Tax

For Petitioner:

Beth N. Ochoa, Attorney

Barry Beauchamp, Taxpayer

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the separately stated charges for furnishing and serving meals, performed by the chef and assistant chef, represent nontaxable labor.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

B. G. Saddle Rock, Corporation, 142133

1-1-98 to 3-31-01, \$10,655.74 Tax

For Petitioner:

Elaine Lerma, Representative

For Sales and Use Tax Department:

Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the determined measure of tax is excessive because it has not been adjusted for additional nontaxable cover charge income, additional loans, employee theft, and discarded food.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Bernard Francis Kolanowski, 211996

11-1-94 to 6-30-95, \$5,915.00 Claim for Refund

For Claimant:

Bernard F. Kolanowski, Claimant

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant entered into a construction contract to furnish and install fixtures for the City of Vista.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD SEPTEMBER 21, 2004

Colin G. Campbell, 224478

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

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**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 21, 2004**

David M. Golumbic, 216561

Final Action: Mr. Chiang moved that the petition be redetermined as recommended by the Appeals Division. Mr. Parrish made a substitute motion to reduce the taxable measure to \$20,698.00. The substitute motion was seconded by Mr. Leonard and duly carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang voting no, Ms. Mandel not participating.

Kenneth Paull Smith and Diana L. Smith, 207936

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD SEPTEMBER 21,
2004**

Fibernet, Inc., 87388

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Robby Fulton, 240101

2002, \$1.00 or more

For Claimant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE
CLAIM HEARING HELD SEPTEMBER 21, 2004**

Elaine M. Nichols, 245442

Final Action: Ms. Mandel moved to sustain the action of the Franchise Tax Board. Mr. Leonard made a substitute motion to reverse the action of the Franchise Tax Board. The substitute motion was seconded by Mr. Parrish and duly carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no.

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HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Samantha Jones, 251148

2003, \$347.50

For Claimant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 22, 2004**

Kampee Mongkolsiri, 213313

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Carpeteria Markarian Company, Inc., 197090

Final Action: Upon motion of Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board deferred consideration of this matter to the next Board meeting and directed staff to research the rebate issue.

Demboyz, Inc., 182958

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Pictured Illusions, Inc., 154372

Final Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Robert Allen Davis and Richard Charles Leavenworth, 158409

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, September 22, 2004

Mold Machine Company, Inc., 182123

Final Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARING

Luis Eduardo Gil, 163980

10-1-98 to 12-31-00, \$18,316.89 Tax, \$00.00 Penalty

For Petitioner: No Appearance

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether the audited understatement includes vehicles not sold during the audit period.

Action: (Motion expunged.)

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD SEPTEMBER 22, 2004

Ibrahim Oudeh, 209552

Final Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Denise Alina Salazar and Rich Manuel Salazar, 185787

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Mr. Chiang. Mr. Leonard made a substitute motion to reduce the penalty to negligence. The substitute motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Crossroads Truck Dismantlers, Inc., 193778

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Barry P. Beauchamp, 205825

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, September 22, 2004

B. G. Saddle Rock, Corporation, 142133

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Bernard Francis Kolanowski, 211996

Final Action: Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the claim be redetermined as recommended by the Appeals Division.

The Board recessed at 11:50 a.m. and reconvened at 1:00 p.m. with Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Luis Eduardo Gil, 163980

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that its previous motion to redetermine the petition be expunged.

The Board deferred consideration and directed this matter be brought back as a hearing at the next Culver City meeting.

Glasstone, Inc., 190970

4-1-98 to 3-31-01, \$60,191.00 Tax

For Petitioner:

Dwight Montgomery, Attorney

Mark J. Moscrop, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is entitled to a higher percentage of storage breakage allowance.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be submitted for decision.

Victor A. Serrao, 207674, 208348

10-1-96 to 6-30-01, \$130,711.96 Tax, \$00.00 Penalty

For Claimant:

Victor A. Serrao, Taxpayer

Gina Serrao, Witness

Vito Serrao, Witness

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant made taxable leases of Christmas trees to his customers, and, if so, what is the measure of tax.

Action: Upon motion of Mr. Parrish, and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be submitted for decision.

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PUBIC HEARING

BUSINESS TAXPAYERS' BILL OF RIGHTS HEARINGS

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearing.

Speakers: Jim Fier, Downy, Managing Partner, Smith & Fier

Mr. Leonard requested a review of the Board of Equalization's current refund process.

PROPERTY TAXPAYERS' BILL OF RIGHTS HEARINGS

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearing.

Speakers: Paul Davis, President, Nations Rent to Own (Exhibit 9.19)
Dale Jacobs, CPA, representing a number of clients in the rent-to-own industry
Otu Ubom, a retired teacher and resident of Chino Hills, San Bernardino County
Terry L. Polley, Attorney, Ajalat, Polley & Ayoob (Exhibit 9.20)
Darlene Bloom, Clerk of the Board, Orange County Board of Supervisors

Mr. Gilman entered into the record written correspondence from Carl Lawton, a Los Angeles County property owner (Exhibit 9.21), and Rebecca Bartling, a San Diego County property owner (Exhibit 9.22).

Exhibits to these minutes are incorporated by reference.

Mr. Parrish directed staff to comply with Ms. Bloom's request to be notified by email when Board of Equalization manual revisions and approved regulations are completed.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 22, 2004**

Glasstone, Inc., 190970

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

The Board deferred consideration of this matter.

Victor A. Serrao, 207674, 208348

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division and to provide a 24-month payment plan.

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Ms. Mandel and Mr. Leonard requested the Appeals Division to provide a report on the circumstances of the change in the Board's discretion to grant or deny relief of the finality penalty. Also, the report should explain the process for notifying the Members and taxpayer representatives about this type of change.

The Board adjourned at 2:30 p.m.

The foregoing minutes are adopted by the Board on December 14, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *Marco A. Sanchez, 89000214800; Dennis Bruno, 15042; Steven Wiener, 171101; Meza Family Enterprises, Inc., 19866; Meza Body Shop Supplies, Inc., 198715; and, Philip Werbin and Leonard Werbin, 185789.*